Justice of the Peace
and
LOCAL
GOVERNMENT REVIEW
ESTABLISHED 1837
[Registered at the General Post Office as a Newspaper]
LONDON:
SATURDAY, OCTOBER 11, 1958
Vol. CXXII No. 41 PAGES 660–675
Offices: LITTLE LONDON, CHICHESTER, SUSSEX
Chichester 3637 (Private Branch Exchange).
Showroom and Advertising:
11 & 12 Bell Yard, Temple Bar, W.C.2.
Holborn 6900.
Price 2*s.* 9*d.* (including Reports), 1*s.* 9*d.* (without Reports).

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NOTES OF THE WEEK

All Present Except the Magistrates

The Scotsman of September 16 relates an incident, probably without precedent, in what we should call the magistrates' court at Rothesay. Three defendants charged with assault or breaches of the peace, who had pleaded not guilty at a previous sitting of the court, appeared with their legal representatives, and the town clerk, the fiscal, and the witnesses were also present, but there were no magistrates.

In the words of the report in *The Scotsman*, "the charges were deserted *simpliciter* and the accused released." The town clerk said that no magistrate or police Judge could be contacted. He thought the available magistrates and police Judges had left for Arran to attend a meeting of Bute county council of which they were all members.

The defending agents protested, and one of them said it was ridiculous that there should be none available to sit on the bench from a total of four magistrates and three police Judges.

We have not heard of a precisely similar instance in this country, and it looks as though there must have been some misunderstanding. It happens occasionally and unavoidably that magistrates cannot fulfil their engagements, though it is rarely that none attends. In such an event the clerk finds at least one magistrate so that the business of the court can be disposed of if only by adjournment for the time being. Naturally, if possible, two justices are called in so that the magistrates' court can sit with full jurisdiction.

Open Air Sales of Food

The sale of food from barrows and stalls is always said to meet a demand from the poorer sections of the community because the barrow boy or stall-holder can sell many commodities more cheaply than can the shopkeeper. There is a considerable amount of obstruction of the highway involved in many towns, and this becomes a more urgent matter as traffic continues to increase. Another aspect of the matter that is even more important is the unhygienic way in which food is exposed for sale in the open air.

This was the subject of a paper by Mr. L. Mair, chief public health inspector for Newcastle upon Tyne at the annual conference of the Association of Public Health Inspectors, a report of which appeared in the *Manchester Guardian*. He said that in no other field of sanitary activity had he found such difficulty and obstinacy as he had among street traders. They could not be abolished, he said, because they fulfilled a public need, but some of them seemed to have little regard for even the most elementary principles of hygiene. Legal proceedings appeared to have only a temporary effect, and the task of the inspectors was not made easier by the trivial penalties imposed for contravention of the food hygiene regulations. Unless much more rigid controls were introduced the sale of food on open barrows should be prohibited.

Another speaker went so far as to say that the open-air sale of meat and fish should be banned. He also said, and we think this is significant, that the public accepted lower standards in the open air.

In the last resort the remedy for an unsatisfactory state of things lies with the public who choose to accept these conditions.

Unlawful Possession of Army Documents

A licensee who pleaded guilty to three offences under s. 196 of the Army Act, 1955, was said by his advocate to have been regarded as a friend and benefactor by soldiers from a nearby camp, to whom he lent money. It was stated by the prosecution, that for security on loans he kept soldiers' paybooks or identity cards. Investigations showed that he had three paybooks and a number of identity cards in his possession, and that the soldiers owed him about £20.

It does not appear from the report in the *Warwick Advertiser* that the defendant charged any interest, and he may have acted in ignorance of the law, but

he rendered himself liable for any offence against the section to a fine of £100 or to three months' imprisonment, or to both. He was fined £6.

The section provides, *inter alia*, that it is an offence for any person, as a pledge or a security for a debt to receive, detain or have in his possession any official document issued in connexion with the payment of any pay, pension, allowance, gratuity or other payment payable in respect of his or any other person's military service.

The Age of Criminal Responsibility

For a long time past there has been a demand for the raising of the age at which children become in the eyes of the law capable of committing a criminal offence. Nobody is heard to express the opinion that the conclusive presumption in favour of a child under eight should be changed in any way, although there is no doubt that many quite young children know, for example, that stealing is wrong and can lead to contact with the police and the courts. What many people would like is to have some clear statutory provision in relation to the position of children under 14, the present presumption being the subject of some difference of interpretation. Beyond all this, however, is the question whether children above the age of eight should be conclusively presumed incapable of crime so as to be outside the jurisdiction of the criminal courts, and if so, what age should be fixed. Some suggest 11, some school-leaving age, and a few the attainment of majority.

We think there is in some minds a confusion between the understanding and responsibility of children on the one hand, and the way in which they should be treated on the other. It is one thing to say that allowance must be made for the instability and immaturity of young offenders, but quite another to say that these young people must not be treated as knowing the difference between right and wrong, and incapable of forming a criminal intent. We are emphatically in favour of making full allowance for the irresponsibility, inexperience and waywardness of children and adolescents, but we believe that nothing is to be gained and a great deal to be lost by treating them as if they were unable to distinguish right from wrong. The first step in dealing with a young offender is to make sure that he appreciates his position as someone who has done wrong and must answer for it. If he is treated as if he was only unfortunate and deserving of sympathy he will be strengthened in the belief that prevails among many young people that the court cannot punish him. Once he is made to face squarely the fact that he has done wrong knowingly and that this is why he is before the court it becomes possible to talk about helping him and understanding his temptations or difficulties.

The important matter, as we look at it, is not so much the age at which the criminal law can touch children as the manner in which the courts deal with them, recognizing occasionally that a child has not shown any evidence of the capacity to form a criminal intention, and at others, while in no doubt on this point, taking fully into consideration his youth and lack of stability. This, we believe, is what the courts are already doing.

Juvenile Court Jurisdiction

Another matter, not unconnected with the question of criminal responsibility, is the extent of the jurisdiction of the juvenile court, which at present is limited to dealing with persons who are under 17 years of age. There are those who would raise the age limit by a year, and others who go so far as to argue that if an infant is not regarded by the law as fully responsible for all his acts then he should be regarded as not capable of crime during infancy. Some advocate that the juvenile court should deal with all offenders under 21 and that they should not be charged with offences, but brought before a juvenile court as in need of State intervention or something of that kind, the court exercising, as some put it, a Chancery jurisdiction.

We cannot agree with this attitude. As we have said already, most young offenders know that they are doing wrong, and the fact that their offences may be due to parental neglect and bad example has nothing to do with the question of the capacity to commit crime. They may see no reason for conforming to high standards of conduct, but that does not alter the fact that they know what crime is and what may be the consequences. As to the 15 and 16 years old group, many of these are unfortunately already on the road to a criminal career and prepared to resort to violence. There is nothing childish about their behaviour and they strike many observers as not fit subjects for the juvenile court, where the emphasis is on the welfare of the offender and the atmosphere is quite unlike that of a criminal court. Some of them are heading for borstal and have little respect for the law or the court. The atmosphere of the juvenile court, where the emphasis is strongly on welfare, as is usually right, tends to relegate to the background such matters as the protection of the public and the deterrence of potential offenders. The offences of all too many teenagers call for such measures as will protect the public and serve as a warning to others. This is not to suggest that there should be a policy of severity regardless of the welfare of the young offender, but only to point out that there are other considerations that must be given due weight. We do not suggest that the age for juvenile court purposes should revert to 16, as it was for many years, but only that it would be a mistake to raise it still higher. Whatever may have been the position 50 years ago, we feel sure that magistrates in adult courts today are anxious to deal as constructively as possible with young offenders, while at the same time bringing home to them the fact that offences must be recognized for what they are, and not accidents or misfortunes.

Preparing for the Winter Evenings

The Essex County Constabulary *Road Safety Bulletin* for September, 1958, appropriately draws attention to the fact that we are approaching the season of short days and long nights and advises motorists to check lamps and batteries, make certain that bulbs are in order and to see that lights are on in good time. These are elementary precautions which one expects any responsible driver to take without having his attention drawn to the need for them but we are, unfortunately, developing the habit of expecting to be reminded of things which we ought to think of for ourselves. For example why should county councils spend public money in reminding drivers that their driving licences are due for renewal ?

Courts can always play their part in trying to ensure that people develop a proper sense of responsibility by treating lighting offences and other offences which are not serious offences as not being, on the other hand, mere trivialities. If they do not do so a defendant who commits such offences because he cannot be bothered to attend properly to his duties as a motorist gets the impression that the courts take the same view as he does of those duties

and he continues to behave in the same irresponsible fashion. Erring children need correction by their parents and their schoolmasters, and erring adults all too often need correction by the courts. It is for those to whom this duty of correction falls to see that it is effectively carried out.

Two Wrongs do not Make One Right

The Western Morning News of September 16 contained a report that illustrates the futility of taking the law into one's own hands in a moment of exasperation. A defendant who was said by his advocate to have suffered considerable annoyance by cars being parked around his house, pleaded guilty to wilful damage amounting to £5 to a car upon the bonnet of which he was said to have scratched "No parking." The defendant was fined £5 with £5 costs and ordered to pay the damage.

If there was an offence of obstruction or parking in a prohibited place, a better remedy, and one that would have cost the defendant nothing, would have been to complain to the police. Taking direct action was almost certain to lead to trouble, as it did in fact. At all events the defendant was evidently candid and did not seek to deny his offence. When asked by a police officer to whom complaint had been made to write the words "No parking" on a cigarette packet he did so and thus supplied evidence of similarity of handwriting.

An Observant Policeman

According to a report in the *Evening Argus*, Brighton, of September 19, a young man stole a motor bicycle on May 26 and was able by using false number plates to use it until September 2. On that date a constable in Portsmouth noticed that the machine, then being ridden by the thief, bore registration plates issued in 1935, which was before the motor cycle in question was manufactured. As a consequence the machine was recovered and the thief was fined £25. In passing we note that the excuse which he gave for committing such a serious offence was as follows: "All my mates had been showing off with their posh bikes and as I could not afford one I went to —— to try and find one." This was, to him an adequate reason for depriving the owner of the machine of the use of his property for over three months, as it turned out, and indefinitely if the policeman concerned had not been so observant. This officer was doing that little extra which makes all the difference to the work of the police. It is easy to do such duties as a matter of routine, and no one could have complained if he had failed to notice what he did; indeed it seems probable that other policemen between May 26 and September 2 had seen the bicycle and had not noticed that the registration number did not match the machine. We hope that this officer will get the credit he deserves for his diligent attention to one of a policeman's main duties, the detection of crime.

Compensation

We are indebted to Mr. G. Courtney, clerk of petty sessions, Belfast, who, on reading our note at p. 594, *ante*, thought our readers might be interested to learn of a new enactment in Northern Ireland dealing with compensation on conviction.

Northern Ireland already had, in the Probation Act (Northern Ireland), 1950, a section equivalent to s. 11 (2) of the Criminal Justice Act, 1948. The new enactment is s. 9 of the Summary Jurisdiction and Criminal Justice Act (Northern Ireland), 1958, which is as follows:

1. Where a court of summary jurisdiction makes any order on the conviction of any person for an offence it may thereupon, on the application of any person aggrieved and without prejudice to any other power exercisable by it, order the person convicted of the offence to pay to the aggrieved person such sum not exceeding £100 as the court thinks proper by way of satisfaction or compensation for any loss of property suffered by the aggrieved person as a result of the commission of that offence.

2. An order for the payment of any sum awarded under this section may be enforced in like manner as an order for the payment of a penal sum and any sum so awarded shall, for the purposes of any enactment providing for imprisonment in default of payment of a penal sum, be aggregated with the amount of the fine, if any, ordered to be paid in respect of the offence.

Non-appearance of Defendant

We are wondering whether something is omitted from a report of proceedings in a magistrates' court which appeared in the *Lancaster Guardian* of September 12. It tells of four men being ejected from a cinema and of one of them being *arrested* for being drunk and disorderly. The report continues the story by saying that he was fined at the local court the sum of £2 for the offence "he did not appear but police stated he had been bailed out in the sum of £2."

There is, of course, no power for a magistrates' court to hear a case in the absence of a defendant unless he has been duly served with a summons. The relevant section is s. 15 of the Magistrates' Courts Act, 1952. When a person is arrested for an offence and is released from the police station on a recognizance conditioned for his appearance at the appropriate court to answer the charge that court can proceed on that occasion only if the accused person appears in person as required by the condition of his recognizance. If he does not so appear the court is not seized of the case, and the usual procedure is for the prosecution either to lay an information and ask for a summons to be issued or to apply under s. 97 of the Magistrates' Courts Act, 1952, for a warrant for the defendant's arrest.

A person who fails to appear in accordance with a recognizance so entered into at a police station is liable, under s. 96 of the Magistrates' Courts Act, 1952, to have his recognizance declared to be forfeited and to be adjudged to pay the amount in which he is bound. This is, of course, without prejudice to his liability to be dealt with subsequently for the offence in question if he is proved guilty of it.

Whose Responsibility?

The Road Traffic Act, 1930, enacts that a person shall not drive a motor vehicle on a road unless he is the holder of a licence. Everyone who wishes to drive must see that he gets the appropriate licence and when he does so he is well aware of the period for which the licence is current and of the date when he must renew it if he wishes to continue to drive. This seems to us as clear an example of personal responsibility as could be found. A motorist who, according to *Berrow's Worcester Journal* of September 19, was summoned for driving without a current licence, explained that it happened because his driving licence reminder had gone to the wrong address, and his sister had not sent it on to him as she should have done. Why should he be encouraged to expect a "driving licence reminder"? He is the only one who is concerned and who knows whether

it is necessary for him to renew his licence. He may have changed his job and no longer need one. It is natural for him, once he is accustomed to receiving a reminder, to come to rely on that, but in our view it is no part of a licensing authority's duty to send reminders to people who have taken out licences that those licences need renewing. We cannot help wondering how this practice started ; maybe it is argued that in the long run public money is saved because licences are duly renewed in time and that if they were not the failure to renew would often not be detected for a considerable time and the fees would be lost. We still hold to our opinion that it is better to expect people to attend to their own responsibilities.

A Thankful Father

From time to time, in juvenile courts, one hears parents making excuses for their children who have committed serious offences and appearing to resent the action of the police in bringing the matter before the courts. We welcome, therefore, the attitude of the father who thanked the constable who chased and caught his son on a "borrowed" motor cycle and who said in court "It may have led to something further. I am very worried about this type of thing and Lord knows where it might have led if he had got away with it."

Any sensible parent will be glad to have such misdeeds by his son brought to his notice at any early stage, even though an appearance in court is involved. Still more will he welcome help from the police in time to prevent a court appearance, and the various schemes operated by some police forces rely greatly on the co-operation of parents, school teachers, and others for their success. The foundation of good behaviour should be laid in the home, but even the best of parents cannot always prevent their growing sons from getting into mischief, and possibly into bad company, outside the home; the aim of all who are concerned with the welfare of youngsters should be to enlist the aid of the parents and to bring them as much as possible into any scheme for preventing juvenile delinquency.

Spoiling it for Other People

Those who commit crime generally involve other people in their troubles, and that is a fact that operates as a powerful deterrent to many men who stop to think before they act. It is not so likely to be present to the mind of the young and irresponsible unless their elders point it out.

The *East Anglian Daily Times* recently reported a case that may have unfortunate results which no doubt the offenders did not foresee. At Lowestoft, 14 boys from a holiday camp to which schoolchildren were sent admitted a number of offences of larceny. It was stated that in 20 years no such thing had taken place in the camp, which was subsidized by a London borough out of its funds. The chairman of the camp committee made the journey from London in order to attend the court and tender the apologies of the mayor and corporation, who now felt that it was doubtful whether the camp would be held again after what these boys had done.

In imposing fines, the chairman of the court again pointed out that these boys had jeopardized the chances of others to have the opportunity of going to camp in Lowestoft.

Just as these boys had a responsibility to others who might hope to enjoy what they had enjoyed, so also have probationers a responsibility to others who may in the future be probationers seeking employment. Employers may not unnaturally hesitate to take on a probationer who has been dishonest, but many are quite willing to give one a chance. If he turns out well, that boy has opened a door through which others may enter into regular work. If he behaves badly he has probably closed the door, for it is not surprising if an employer tells a probation officer that however much he regrets it he cannot afford to repeat the unfortunate experiment. The probationer who does well in employment can be a real help to his probation officer in this matter.

Getting Home After Being Disqualified

The *Evening Argus*, Brighton, of September 16, 1958, reports a case in which a defendant was fined £3 "for driving while disqualified and uninsured." We refrain from commenting on the penalty, which is governed by the provisions of s. 7 (4) of the Road Traffic Act, 1930, but we do think that the report calls attention to a matter which magistrates' courts may think worthy of consideration.

This defendant had on a previous occasion been fined £10 and disqualified for three months for a driving offence, and soon after the court had given its decision a witness in the case saw the defendant driving his car. On the hearing of the charge of driving whilst disqualified the defendant's advocate said that there was no intention to flaunt the decision of the court but that the defendant did not know what to do with his car which he had parked outside the court when he attended the hearing of the earlier case.

It occurs to us that it might be as well for a court, on disqualifying a defendant, to make it clear to him that the disqualification starts from that moment and that if he happens to have come in his car to the court he must make arrangements as best he can for someone else to drive his car away. We have called attention to the penalty provisions of s. 7 (4) of the Act of 1930, and anything which a court can do to ensure that a defendant understands his position and does not, perhaps without full appreciation, commit an offence of so serious a kind is well worth doing.

Children in Care—Parental Contributions

In our issue of December 3, 1955 (119 J.P.N. 777) we suggested that there should be a radical alteration in the cumbersome, complicated and wasteful system of accounting for parental contributions made towards the cost incurred by local authorities in maintaining children taken into their care. It was an integral part of the system that quite unnecessarily a stream of remittances should flow from the local authorities into the Home Office, there to be accounted for in detail and later returned in the main to the remitting authorities. It was also necessary to obtain the specific approval of the Home Office before any outstanding amounts could be written off as irrecoverable, a procedure which usually took several months.

The Local Government Act, 1958, s. 62 and sch. 8 has now swept away this procedure and in future the Home Office will no longer be required to intervene in the matter. Contributions collected by an authority in respect of a child or young person committed to its care are to be retained by that authority: in any other case they are to be paid over (less expenses of collection) direct to the authority into whose care the child or young person has been committed.

The new and direct system is to be welcomed: it should result in considerable administrative savings.

SUMMARY TRAIL OF INDICTABLE OFFENCES: DUTIES OF MAGISTRATES IN SERIOUS CASES

[CONTRIBUTED]

Section 18 of the Magistrates' Courts Act, 1952, gives the magistrates jurisdiction upon the application of the prosecution to try summarily certain indictable offences. The relevant subsections are as follows:

Subsection (1) provides; "Where an information charges any person with an offence that is by virtue of any enactment both an indictable offence and a summary offence, the magistrates' court dealing with the information shall, if the accused has attained the age of 14, proceed as if the offence were not a summary offence, unless the court, having jurisdiction to try the information summarily, determines on the application of the prosecutor to do so." And this application may be made either expressly or by conduct; *see ex parte Rigby* [1958] 3 All E.R. 30. And subs. (3) gives the magistrates jurisdiction, even where they have begun to inquire into the information as examining justices, to proceed to try the case summarily. It provides:

"Where a magistrates' court has, in pursuance of subs. (1) of this section, begun to inquire into the information as examining justices, then, if at any time during the inquiry it appears to the court, having regard to any representations made in the presence of the accused by the prosecutor, or made by the accused, and to the nature of the case, that it is proper to do so, the court may proceed to try the case summarily. Provided that, if the prosecution is being carried on by the Director of Public Prosecutions, the court shall not act under the subsection without the Director's consent." And even in such a case provision is made for the magistrates to discontinue the summary trial, and to continue the inquiry as examining justices. Thus, by subs. (5) it is provided; "Where under subs. (1) of this section, a magistrates' court has begun to try an information summarily, the court may, at any time before the conclusion of the evidence for the prosecution, discontinue the summary trial and proceed to inquire into the information as examining justices." Again provision is made by s. 19 for the summary trial of information against an adult for certain indictable offences. Of the relevant subsections, subs. (1) provides; "The following provisions of this section shall have effect where a person who has attained the age of 17 appears or is brought before a magistrates' court on an information charging him with any of the indictable offences specified in sch. 1 to this Act." (These are certain indictable offences which may be dealt with summarily with the consent of the accused.) Subsection (2) provides: "If at any time during the inquiry into the offence it appears to the court, having regard to any representations made in the presence of the accused by the prosecutor or made by the accused, and to the nature of the case, that the punishment that the court has power to inflict under this section would be adequate, and that the circumstances do not make the offence one of serious character, and do not for other reasons require trial on indictment, the court may proceed with a view to summary trial." And as regards the sentence to be imposed after conviction at the summary trial, subs. (4) provides: "Where the offence with which the accused is charged is triable by quarter sessions, the court shall also explain to him that if he consents to be tried summarily and is convicted by the court he may be committed to quarter sessions under s. 29 of this Act if the court, on obtaining information of his character and antecedents, is of opinion that they are such that greater punishment should be inflicted than the court has power to inflict." (*See* also a similar provision in s. 25 (5) as regards a case where the court proceeds under s. 18 (3).) It is to be noted that this power of committing in custody to quarter sessions for sentence in accordance with the provisions of s. 29 of the Criminal Justice Act, 1948, is, from the very wording of s. 29 (1) of this Act of 1952, only applicable in a case proceeded with by the court under s. 18 (3) or s. 19 of this Act of 1952, and that it is not applicable in a case proceeded with by the court under s. 18 (1) of this Act (*see* also *R.* v. *South Greenhoe Justices, ex parte Director of Public Prosecutions* (1950) 114 J.P. 312). And it was held in *R.* v. *Kent Justices, ex parte Machin* (1952) 116 J.P. 242, that this provision as regards the giving of such an explanation is mandatory, and that there must be strict compliance with it. It is necessary however, for certain consents to be obtained to the trial summarily of an indictable offence under s. 19, subs. (7), which provides; "Nothing in this section shall empower a magistrates' court to try an indictable offence summarily—(*a*) without the consent of the prosecutor in a case affecting the property or affairs of Her Majesty or of a public body as defined by s. 7 of the Public Bodies Corrupt Practices Act, 1899; (*b*) without the consent of the Director of Public Prosecutions where the prosecution is being carried on by him." And as regards the discontinuing of a trial, s. 24 provides: "Except as provided in subs. (5) of s. 18 of this Act a magistrates' court, having begun to try an information for any indictable offence summarily, shall not thereafter proceed to inquire into the information as examining justices."

It will have been seen therefore that the magistrates' court is under a duty to consider, before proceeding with a view to summary trial under s. 19 (2) above, whether the punishment that the court has power to inflict would be adequate, and whether the circumstances do not make the offence one of serious character and do not for other reasons require trial on indictment. The magistrates' court is also under a similar duty of consideration in a case in which it has decided under subs. (2) to proceed with a view to summary trial, but before it has begun to try an information for any indictable offence summarily it is desirous of proceeding, within the meaning of s. 24 thereafter to inquire into the information as examining justices.

Thus, in *R.* v. *Ibrahim* (1958) 122 J.P. 119, a charge of unlawful wounding, an offence which though indictable, is triable summarily with the consent of the accused, was preferred against the appellant, and, the prosecution consenting, was to be tried by the magistrate under the procedure of s. 19. After however, hearing the prosecution's opening speech, the magistrate stated that he was not going to try the case summarily because it was too serious, and he committed the appellant for trial. A count under s. 18 of the Offences Against the Person Act, 1861, for wounding with intent was added to the indictment, and the appellant was convicted. It was held by the Court of Criminal Appeal dismissing the appeal that the committal was valid since

the magistrate at that stage of the proceedings had not begun to try the information summarily within the meaning of s. 24. This duty of the court also arises in a case in which it has determined under s. 18 (1) to proceed as if the offence triable on indictment were a summary one, but it is desirous of discontinuing the summary trial, and, proceeding under subs. (5) of this section to inquire into the information as examining justices.

It is proposed now to see what guidance to a magistrate's court upon this important aspect of the matter is to be found in reported cases. This examination has been prompted by the report in the lay press (1958) *Evening Standard*, June 10, where a metropolitan stipendiary magistrate, in granting an absolute discharge to a man who had pleaded guilty to the theft of nearly £6,000, says: "I think this is an altogether exceptional case, as the prosecution must have thought, because it is not very often they ask an inferior court to deal with the theft of nearly £6,000." The first case is that of *R.* v. *Bennett* [1928] 20 Cr. App. R. 188, in which the Court of Criminal Appeal made certain observations on the powers of magistrates under the similar corresponding wording of s. 24 of the Criminal Justice Act, 1925, the forerunner of the present Act. There the applicant applied for leave to appeal against a sentence of five years' penal servitude for inflicting grievous bodily harm, to which charge he had pleaded guilty. Avory, J., in dismissing the application, remarked that a practice to be deprecated was springing up, *viz.*, that of reducing charges so that, under the recent Act (Criminal Justice Act, 1925) they might be dealt with summarily or at quarter sessions, instead of being sent to Assizes (where the appropriate sentences could be inflicted). That Act was not intended as an invitation to the inferior courts to reduce charges in order to found jurisdiction. Here the facts of the case (which the learned Judge recited) justified a much more severe sentence on the charges which were not preferred, *viz.*, assaulting with intent to murder or wounding with intent to do grievous bodily harm—a sentence which could have been imposed at Assizes, whereas that which quarter sessions had imposed, though it was the maximum, was for the lesser offence. The application by the magistrates of the same section of this Act was the subject of discussion and disapproval by the Divisional Court in *R.* v. *Bodmin Justices, ex parte McEwen* (1946) 111 J.P. 47, where there was an application for the writ in the nature of *certiorari* to bring up and quash a conviction by the magistrates for unlawful wounding. At the hearing the applicant had been charged with wounding with intent to do grievous bodily harm by stabbing a fellow soldier in the back with a bayonet, but at the request of both the prosecution and the defence, the magistrates in purported exercise of their power under s. 24 (1) of this Act reduced the charge to unlawful wounding, and consented to deal with it summarily. In giving what was agreed upon as being the judgment of the Court and refusing the writ upon the ground of the wrongful application of this section by the magistrates (although the writ was granted upon another ground), Lord Goddard, C.J., says: "Here is a case in which a man's life has been seriously imperilled and if he had died the applicant would have been charged with murder. Where a man, whether under the influence of drink or not, takes a bayonet and stabs another man in the back with the consequences which are here disclosed, it was never intended that justices should deal with the case by reason of that section. For justices to deal with such a case by treating it as nothing much more than a case of common assault is a most extraordinary state of affairs. Justices should remember that they have to deal with matters of this sort judicially, and, although they must take into account what the prosecution and defence say with regard to the propriety of the charge being reduced, they are not bound, because the prosecution want the matter dealt with there and then, without the necessity of going to the Assizes (where this case undoubtedly should have been sent), to assent to dealing with it summarily. . . . That justices should deal with a case of this sort under the provisions of the section to which I have referred is unfortunate. That, however, is not a ground for *certiorari*. The justices having done this the Court cannot interfere with their decision. We can only express grave disapproval of the justices having acted in this way." And these words of warning were repeated by Lord Goddard in *R.* v. *South Greenhoe Justices, supra*, where the defendant had been summarily convicted by the magistrates under s. 28 (1) of the Criminal Justice Act, 1948 (now s. 18 (1) of the above Act of 1952), upon the application of the prosecution of seven offences against the Bankruptcy Act, 1914 (as amended). Upon being asked by the defendant to take six other cases into consideration, the magistrates purporting to act under s. 29 (1) of the Act of 1948 committed the defendant to quarter sessions for sentence. Upon the aspect of the case which is the subject of discussion, Lord Goddard says: "There were therefore, altogether 13 cases. We have not heard much about the nature of these cases, but I desire to say, what has been said before in this Court, more especially in *R.* v. *Bodmin Justices, ex parte McEwen*, that the fact that justices have power to deal with cases is no reason why they necessarily should deal with them. When a case of a serious character, and surely a case of a man committing 13 bankruptcy offences is one of a serious character, that case ought to go for trial. It is not merely a matter of what the sentence may be. It may be that where the case does go for trial, the court of trial will think it necessary only to impose a nominal sentence or even to bind over the offender. That is not the point. Serious cases ought to be dealt with by a superior court, and if the justices had been asked to send the present case for trial in the first instance, there is no reason to suppose that they would not have done so." Again, in conclusion reference may be made to the case of *R.* v. *Middlesex Quarter Sessions, ex parte Director of Public Prosecutions* (1950) 114 J.P. 276. There Lord Goddard has this to say on the matter and with regard to the power of magistrates to try the case summarily with the knowledge that they have the power to commit for sentence to quarter sessions under s. 29 (1) of the Act of 1948: "I would like to direct attention to one other matter. Where giving addresses to justices, I have over and over again called their attention to the fact that because they have power to deal with a case summarily, that is by no means a reason why they necessarily should do so. It is not only a question of sentence. Many cases brought before justices, which they can deal with, are of a very grave character and ought to be sent for trial. There may be matters of mitigation in the case, so that the justices may think (and it may turn out) that the court before which the case is brought in the end may only pass a nominal sentence or even bind the prisoner over. That, however, is not the point. Serious cases ought to be dealt with by the superior courts, and I hope, because Parliament has introduced this new method, prosecutions will not consider it sufficient to get justices to deal with cases and commit offenders for sentence only. Grave cases ought to be dealt with by a Court of Assize or a court of quarter sessions." Then after referring to the facts of the case then before the Court, offering a bribe to a food enforcement officer, he

concludes: "I hope notice will be taken by justices of the fact that, when serious cases are brought before them, it is not enough to say; 'We have got power to deal with the case, and, therefore, we will deal with it.' They ought to consider whether it is not a case which should go forward to a Court of Assize or a court of quarter sessions, as being the proper court to deal with serious cases." (*See* also per Lord Goddard in *R.* v. *Revuelta* (1958) *The Times,* August 21).

M.H.L.

UNTESTED EVIDENCE

In the middle of this year the newspapers published pictures of the London–Birmingham motorway, which so far has progressed some distance across Hertfordshire and Bedfordshire. This has been described as the most extensive civil engineering operation undertaken in England since railways were built. At present its route is a scene of devastation, and recalls how Thomas Hughes cursed the Great Western Railway for spoiling the Vale of the White Horse, and how somebody else denounced spoliation of Derbyshire by railway lines, whose only function was to enable a fool from Manchester to get to Sheffield as quickly as a fool from Sheffield could get to Manchester.* Nowadays, however, speed is not regarded as the prerogative of fools alone, and soon the new motorways will no doubt be accepted as a feature of the countryside, as railways are accepted. Modern practice in engineering and "landscaping" will make them less obtrusive than many of the railways and the present main roads. Statements published by the Minister of Transport and Civil Aviation have emphasized that this is no ordinary highway. Traffic other than motors will not be allowed to use it; it is meant for cars as a railway is meant for trains alone. This new conception of an exclusive motor road, on which apart from some emergency drivers will not be allowed to stop, produces a new development, of service areas some 12 miles apart. Each service area will cover about 10 acres, divided between the two sides of the motor road; each side will include parking spaces, but there will be no access for wheeled traffic from one side to the other of the area. Filling stations and refreshment rooms are to be provided by private enterprise, under strict control, designed to preserve amenity and to prevent a monopoly from falling into the hands of distributors selling particular brands of fuel and lubricant. We presume, however, that sanitary accommodation on these areas will be provided by the Ministry, not by private enterprise.

Published statements say that land for the road and service areas has for the most part been obtained by agreement, without its being necessary to make compulsory purchase orders. One such order was however proposed, and was the subject of a hearing reported in the newspapers early in July. Apart from the general interest of the project for these new motorways, a point arose connected with the Franks Report, and it is because of this that we are now referring to the motorway.

As we have just said the proceedings in July, although open in fact to the press and public, were technically a hearing and not an inquiry. The Franks Committee recommended that the power to direct hearings only should not be used in cases of compulsory purchase, but a decision on this recommendation seems not to have been reached. At an inquiry, where reliance was placed on information or an opinion received from a government department, the Franks Committee thought that that information or opinion should be given publicly in the form of oral evidence, and be subject to cross-examination. They particularly referred in this context to advice received by promoters of an undertaking, from the Ministry of Agriculture, Fisheries, and Food. On the occasion to which we are referring, persons whose land it was proposed to take objected because they said it was good farming land. One of them called a professional witness with specialized agricultural experience who testified to this, and expressed the opinion that certain other land within the general limits of situation necessary for the service area might be used with less detriment to farming. A civil engineer also gave evidence on behalf of the objectors, that he had examined other sites not far away, upon which in his opinion the service area could be constructed without loss to its usefulness, from the point of view of traffic. The Minister of Transport and Civil Aviation appointed an outside inspector, a member of the bar, to conduct the hearing, and in his capacity as the acquiring authority the Minister was represented at the hearing by a member of his engineering staff.

This representative gave the fullest information about engineering aspects of the projects; although not technically speaking subject to cross-examination, he readily answered questions put to him on the part of the objectors, so far as the answers were within his professional competence. In our experience, indeed, this is invariably done by the Minister's representatives, both at hearings and inquiries. On the agricultural aspects of the project, he said that advice had been received from the Ministry of Agriculture, Fisheries, and Food, but when counsel representing the objectors wished for further information about agricultural aspects of the project the Minister's representative could only admit frankly that questions about this were beyond his competence to answer. The purport of the advice he quoted was that loss of farming land at the site of the service station was regrettable, and it was hoped that the Minister of Transport would if possible reduce the area to be acquired, but that agricultural objections would be greater to the taking of land at either of the alternative sites suggested by the professional witnesses on behalf of the objectors. Here there was the very material for cross-examination: in particular, one of the alternative sites would have involved part of a farm which, as was agreed on both sides, had suffered from neglect, and had lately come under Government control. The question whether this farm could be brought to such a pitch of productivity as to make it undesirable to take it for a service area (as being land already owned by the government), rather than create a service area upon a private owner's land, was one upon which the objecting owners and their professional witnesses expressed a definite opinion. It would plainly have been helpful to the Minister of Transport and Civil Aviation in the invidious position of judge of his own cause, if he could have had a report from the independent, legally qualified, inspector weighing the agricultural evidence, after this had been given in open court, and tested by cross-examination on behalf of the Minister in his capacity of promoter of the project, as well as on behalf of the objectors.

We have said before, and in face of the mass of prejudice

*We have not succeeded in verifying the place names.

and misunderstanding which has grown up about ministerial inquiries we think it worth while to repeat, that in this class of case the procedure established in *Re London–Portsmouth Road* [1939] 2 All E.R. 464 works much better in the hands of practising lawyers, familiar with the procedure and appearing before an outside legally qualified inspector, than an academic lawyer would expect. At the same time it must be difficult for an objecting party to believe that due weight is being given to evidence of his own witnesses, when the contrary evidence is not produced in public, and is made known only through the mouth of the Minister's representative, who shows that it is already in the Minister's possession but frankly and properly admits that he is not in a position to answer questions designed to test its weight.

THE EXAMINERS EXAMINED

The sixth report of the Select Committee on Estimates is a review of the Treasury system of control of expenditure. That department, which has sent its O. & M. teams far and wide—even into local government—has now been subjected to an examination of its own systems and methods of financial control. It is useful and helpful to local government for administrators in that sphere to review the recommendations of the Committee: we say this despite the understandable view which may be held in some quarters that in the light of reports of various happenings in central government administration it might well be thought that the boot was on the other foot and that Whitehall could learn from local government.

The truth is that each system has something to teach the other. Parallels to the occurrences by which the cost of modernizing the warship "Victorious," estimated in the beginning at something under £10 million, rose to £20 million without any Treasury sanction being given, or indeed required; and the large overspending on new hospital works at the Radcliffe Infirmary at Oxford initiated without prior approval, could not happen in the execution of local government capital works. It may well be that when the money of local ratepayers was required and demanded for the upkeep of hospitals there was a deeper sense of responsibility for the expenditure at all levels than now exists.

On the other hand there is a good deal of Treasury method which is a useful guide to improved local financial practice.

There is no single method of Treasury control. It has moved with changing ideas of what Governments should and should not do: certainly today the view of Mr. Gladstone, who thought the saving of candle-ends very much the measure of a good secretary to the Treasury, would be unlikely to secure acceptance. Control is exercised in relation to policy decisions, to programmes of expenditure and annual estimates, by prior sanction of new projects and by Treasury interest in continuing expenditure on services previously authorized.

A rule made in 1924 lays it down that no memorandum is to be circulated to the Cabinet or its committees in which any financial issue is involved until its contents have been discussed with the Treasury. This principle is applied in the best run local authorities where financial implications of new policies are independently computed and considered.

The Treasury method of discussing and agreeing programmes of work covering several years with the spending departments is valuable, and the Select Committee thought that the usefulness of the programmes could be further increased by preparing them in less general terms. Since the last war it has not been worthwhile for local authorities to emulate this practice for the simple reason that capital spending has been closely controlled by the central government and in general local authorities have been ready and anxious to spend up to the meagre maxima allowed.

In connexion with the annual estimates the Committee emphasize that time is too short for proper scrutiny. This can apply in local government too: one remedy is to select one service for detailed review each year, such examination being held at any convenient period in the year. In some respects central government practice lags behind local methods, for example the revenue expenditure on the hospital service, estimated this year at £400 million, is not subject to direct Treasury control. This is a serious weakness, not repeated in any local government service. On the other hand forward looks (forecasts for several years ahead) were practically non-existent in local government until the general grant forced the adoption of the system. Whatever the future may hold for that instrument (and, of course, its life has already been threatened), the long term forecasts it made necessary will have, we trust, an extended and useful existence.

Prior sanction control is the system whereby every new item of expenditure or any new service, subject to any delegated authority, must be examined and approved by the Treasury. Policy may have been approved, the annual estimates likewise but the particular project must come up for detailed scrutiny. Here the Committee thought that much of the Treasury control on the civil side was too meticulous and did not produce any useful results but were impressed by large savings made in the proposals of the defence departments. They suggested that more attention should be paid to the advantages of associating technical officers with financial decisions: in this advocacy of the right men to examine the right projects there is an idea worth local government consideration. One department or even one man should not be allowed too easily to blind others with science.

Treasury interest in continuing expenditure upon services previously authorized and in departmental methods of financial control has resulted in notable savings ranging from £5 million in one year on the administration of certain services overseas to £6,000 on the telephone services of one department. These O. & M. investigations are well known and are also being continuously made in much of local government with satisfactory results.

Supplementary estimates come in for severe criticism. The Committee believe that they can destroy effective budgetary control both of the nation's economy and of Government expenditure and that in recent years they have been far too willingly accepted by the Treasury. Such estimates can be presented for two reasons. The original estimates may have been understated because of avoidable mistakes by those who prepared and examined them: in so far as supplementaries are presented to remedy such failures of administration we think that in local government also they are often too easily accepted and approved. But in other cases where the original estimates were accurate in the light of facts then known, altered circumstances, or the effects of inflation may present

the disagreeable alternatives of approving a supplementary provision or cutting down a service. The Committee think that rising costs should be countered by economies but they will find many who disagree with them.

Fundamentally, as we said earlier, the whole conception of public expenditure has changed from Gladstone's day. Then the governors thought that money should be left to fructify in the hands of those who possessed it: today the voters of whatever party believe in social services and the welfare state, and the majority pay the necessary taxes and rates without resentment or active opposition. Furthermore, although the British genius for prophesying calamity was much in evidence when the welfare state was inaugurated the fact is that the proportion of the national income redistributed through the social services has remained steady at about 12 *per cent.*, and likewise the share of public expenditure taken by the social services has also remained steady at around 40 *per cent.* Against this background it is not surprising that council members, faced with the choice of squeezing services (including employee dismissals) or approving supplementary taxation, should choose the latter. Exceptions there are but to the majority of the people of this country rates are not a heavy burden; and according to the excise returns on drink, tobacco and football pools, neither is taxation.

All this does mean, of course, that the treasury, whether central or local, has to operate today against a very different background from that known and approved by Gladstone. Its task is correspondingly more difficult but still tremendously worth while. Social expenditure must continue but it remains true that in the best administered authorities, where the virtues of thrift and economy are not forgotten, there is still a determination, effectively translated into action, to secure the best value for the money laid out in the implementation of agreed policies.

LOCAL GOVERNMENT FINANCE—FOR THE BEGINNER

(*Concluded from p. 651, ante*)

ACCOUNTS AND AUDIT

In this final article, what may be called the back room work of local government finance is considered and it is hoped to show that even this has its moments of interest.

The financial accounts

Every local authority must keep proper accounts of the financial transactions and the accounts are made up annually to March 31. There will be separate accounts for capital and revenue transactions and for each rate or other fund which requires to be treated as a separate entity. In most authorities there is only one general rate fund, but in a county, where the cost of certain services is chargeable over parts of the county only, there will be one or more special county funds as well as the general county fund which deals with services, the cost of which is chargeable over the whole county area. There will be a balance sheet for each fund showing the financial position at the end of the year and generally also a consolidated balance sheet, which, by summarizing the separate fund balance sheets, displays the financial position of the authority as a whole. A consolidated balance sheet simplified and explained here and there may look something like this:

Consolidated Balance Sheet at March 31 . . . . .

Liabilities and Surpluses	£	*Assets, Outlay and Deficiencies*	£
Long Term Liabilities		*Fixed Assets and Outlay*	
Borrowed Money—amount owing and still to be repaid	xxx	Capital Assets at what they cost	xxx
		Capital Outlay—amount expended	xxx
Current Liabilities—Actual and Provided for		*Current Assets*	
Creditors—amounts owing by the Authority	xxx	Investments at what they cost	xxx
Bank Overdraft (if any)	xxx	Stocks in Hand—Goods, Materials, etc.	xxx
Provisions for Renewals, Repairs, Losses on Investments, etc.	xxx	Debtors—amounts owing to the Authority	xxx
		Cash at Bank and in Hand	xxx
Other Balances		*Other Balances*	
Borrowed money now repaid—Assets and Outlay still in possession	xxx	Deferred Charges—superseded Assets or Outlay still to be written off over a period of years	xxx
Revenue Surplusses	xxx	Revenue and Other Deficiencies (if any)	xxx
Other Surplusses	xxx		
	xxxx		xxxx

A balance sheet may be understood better when two questions which often puzzle the uninitiated are answered, thus:

(*a*) Why are surplusses shown on the same side of the balance sheet as liabilities?—Because they represent assets in possession and free from liabilities. A surplus is therefore an excess of assets over liabilities and as the balance sheet must "balance" it appears on the opposite side from the assets.

(*b*) Why are deficiencies shown on the same side of the balance sheet as assets?—Because they represent assets which ought to be there, but which are not. A deficiency is therefore an excess of liabilities over assets and similarly because the balance sheet must "balance" it appears on the opposite side from the liabilities.

Trading Undertakings

Nothing has been said so far about trading or semi-trading services carried on by local authorities, such as water supply, markets, transport and the like, and in a seaside town possibly restaurants and other facilities. Separate accounts will generally be kept for these undertakings so that the profit or loss on the year's working is ascertained. The accepted principle in the finance of trading services is that they should be self-supporting, involving no charge on the rate fund. The rate fund, however, stands as guarantor against losses and may have to meet any actual losses incurred, and may benefit from profits made.

Published Accounts

It is a sound principle that authorities having custody of public money should publish their accounts for interested people to see and, if they feel so inclined, to study. Borough councils are required by Act of Parliament to print an abstract of accounts and many other authorities do so, and in addition may have to deposit their accounts for inspection before audit. The accounting work of a local authority goes on unobtrusively for the most part and a little publicity at the end of the year when the final accounts are completed is justified fully. Some abstracts, however, have become far too detailed and bulky to be of general interest—fifty years ago it was possible, no doubt, to print a full abstract of accounts in a small volume, but to-day full abstracts tend to become masses of figures and tables sufficient to put off anyone but the hardened practitioner. Many authorities have adopted the practice of publishing a shorter version giving the

salient features only of the year's transactions. This seems to be an excellent idea and one which is very much appreciated by councillors and members of the public alike.

AUDIT

Just as every local authority must keep proper accounts, so those accounts must be audited, but contrary to what might be expected the same system of audit is not applied to all authorities, or to all the accounts of individual authorities.

We must first distinguish between external and internal audit—the former is carried out under statutory requirements and by an independent auditor—the latter by the authorities' own staff appointed for the purpose. These two types of audit supplement each other—external audit usually takes place after the end of the financial year, while internal audit is carried out continuously throughout the year.

District Auditors

All the accounts of some authorities, and some of the accounts of all authorities are audited by district auditors appointed by the Minister of Housing and Local Government. Although normally undertaken at the year's end, an extraordinary audit may be held if necessary at any time. The district auditor reports on the accounts he examines, and a copy of the report must be sent to the authority. He alone of the local authority auditors has the power of disallowance and surcharge which may be briefly stated as follows.

The district auditor has a duty:—

(*a*) to disallow illegal expenditure and surcharge the amount upon the person responsible for incurring or authorizing it,
(*b*) to surcharge any amount which ought to have been brought into account but has not, upon the person concerned, and
(*c*) to surcharge any loss or deficiency caused by negligence or misconduct, upon the person responsible.

Any expenditure sanctioned by the Minister of Housing and Local Government cannot be disallowed, and there is an appeal against the district auditor's decisions to the Minister, or to the High Court in certain cases.

It will be seen that the district auditor's powers are drastic and the prestige of this audit stands very high in local government circles. The cost of the audit is borne by the local authorities.

Borough and Professional Auditors

The borough auditors—two elected by local government electors and one appointed by the mayor—hold office in a borough unless the council have resolved to adopt an alternative system. Borough auditors need have no particular qualifications, and this method of audit may be regarded more as a relic of the past than a serious system of audit (there may of course, be isolated cases where the method is satisfactory). The alternatives open to the borough are either to adopt completely the system of district audit which already applies to some of their accounts, or to adopt for those accounts which are not subject to district audit the system of professional audit. Professional auditors must be qualified by membership of one of the specified and recognized accountancy bodies, their appointment must be in writing under seal, and among other things the terms of the appointment and the fee payable will be stated. The professional auditor is able to bring into play his undoubted experience of auditing in the commercial sphere, but it is doubtful whether he can compete with the district auditor in specialized knowledge of local government law and finance.

Internal Audit

Internal audit is carried out at the instigation of the local authority itself for its own protection and peace of mind. The practice is now adopted by many large scale organizations and is not confined to local authorities. The chief financial officer is usually responsible for the organization of the internal audit, and generally the work is undertaken by a separate section of the finance department. Apart from checking day to day transactions, one of the important functions of internal audit is to keep the whole accounting procedure under constant review with the object of improving it and preventing mistakes—unintentional or otherwise. It is always better to bolt the stable door before the horse gets out, and this is one of the chief aims of an internal audit.

Conclusion

This ends the present series of articles and, although the temptation to develop some aspects of local government finance more fully has often been present, this has been resisted to preserve simplicity and generality. The practitioner, and the student grappling with the serious business of preparing for the examinations of the Institute of Municipal Treasurers and Accountants, will need no reminder that they must master, also, the *minutiae* of the subject.

MAGISTERIAL LAW IN PRACTICE

The Brecon and Radnor Express. July 17, 1958.

N.H. CONTRIBUTION OFFENCE
Erwood Man Fined

For failing to pay a national health contribution in respect of one week, as a self-insured person, William David Burton, of Caen Farm, Erwood, was fined £1 at Talgarth magistrates' court.

Mr. Rhys Griffiths, prosecuting for the Ministry of Pensions and National Insurance, gave the statement of facts, under the Magistrates' Courts Act, 1957, in the absence of defendant. He stated defendant was a farmer at the time of the offence and had been so employed since July 5, 1948, when he became liable to pay contributions as a self-insured person. When visited by an inspector it was found that he had no card and had never applied for one. In a talk with the inspector defendant said he had no intention of evading payment. A cheque had been received in respect of the period July 5, 1948, to February 8, but the present proceedings were in respect of one week—February 2, 1958, to February 10, 1958.

After a retirement the bench fined defendant as stated.

In the procedure for accepting a plea of guilty from an absent defendant, provided by the Magistrates' Courts Act, 1957, there is a special provision with regard to insurance contributions. Section 1 (4) provides that where the court convicts the accused in his absence of an offence in connexion with the payment of National Insurance contributions, and it is proved that notice of intention to prove failure to pay other contributions has been served on the accused with the summons, and the clerk of the court has received a statement in writing purporting to be made by the accused or by a solicitor acting on his behalf to the effect that if the accused is convicted in his absence of the offence charged he desires to admit failing to pay the other contributions so specified or any of them, then the court may order payment of those contributions as if the failure to pay had been proved.

Proceedings for an offence under the National Insurance Act, 1946, may be commenced at any time within the period of three months from the date on which evidence, sufficient in the opinion of the Minister to justify a prosecution for the offence, comes to his knowledge, or within the period of 12 months after the commission of the offence, whichever period last expires (s. 53 (3)). There is a similar provision in s. 68 (3) of the National Insurance (Industrial Injuries) Act, 1946.

The arrears recoverable, as a penalty, on conviction for failing to pay a contribution are limited to other contributions due during the two years preceding the date of the offence. (*See* r. 19 of the National Insurance (Contributions) Regulations, 1948.)

In this case at Talgarth the defendant had apparently paid the arrears before the summons was heard.

ANNUAL REPORTS, ETC.

REPORT OF THE COMMISSIONER OF POLICE FOR THE METROPOLIS

This document, covering the year 1957, has just been published*. The one satisfactory piece of news contained in it is that the Metropolitan police force shows a net gain of 350 men for the year, though there is still an overall deficiency as against authorized establishment of more than 3,000. In view of the sorry tale unfolded by the Commissioner one can only hope that this shortage will be made up as quickly as possible, and if further financial inducements are needed to make a police career more attractive, one might venture the remark that even at a time when economy is the order of the day, public money could scarcely be spent to better advantage.

The number of indictable offences known in 1957 was 125,754 —more than 17,000 in excess of the figure for 1956, and 33 *per cent.* more than in 1938; furthermore, the total closely approaches the post-war peak of 128,954 in 1954. When set against the figure of 93,937 for 1954 it can be seen how sharply the position has deteriorated.

Increases are reported in offences against the person—wounding being up by 20·8 *per cent.* as compared with 1956, and robberies and assault with intent to rob by some 24 *per cent.* As compared with 1954 offences against the person have increased by 46·5 *per cent.* and robberies and assault with intent to rob by 65·1 *per cent.* Other notable increases are recorded in shop-breaking, car stealing, larceny, and taking and driving away.

One-third of the indictable crimes known to the police were cleared up by arrest or other means, and 37 *per cent.* of those arrested had criminal records. Perhaps the most significant statistic is that arrests of young people in the 17–20 age group increased by 30 *per cent.*

Space precludes further detailed comment; the report should be read by everybody concerned with the criminal law. It certainly arouses grave misgivings—stirred partly by the failure of parental discipline and example shown in the great increase of crime amongst young people, and partly by the fact that penal methods, whilst undoubtedly becoming progressively more lenient, have certainly failed to stem the advance of criminal behaviour. Almost at the same time that the report was published there appeared the text of the First Offenders Act, 1958, which is directed to the limitation of the power of courts to order imprisonment for convicted persons under the age of 21. In itself this Act—remarkable above all for its strange definition of "first offenders"—is a logical extension of processes long since set in motion. But if serious crime goes on increasing (and the figures for the first three months of this year show a further increase as compared with last year) Parliament may well have to consider whether methods of leniency have not been over-tried, and whether the protective and deterrent functions of the criminal law do not need strengthening.

*H.M. Stationery Office. Cmnd. 487. 5*s.* net.

REPORT OF CHIEF INSPECTOR OF FACTORIES

The recently published annual report of the Chief Inspector of Factories shows that there was a reduction of five *per cent.* in the number of factory accidents reported in 1957, compared with 1956 and that the total was the lowest for 20 years despite a considerable increase in industrial activity over the same period. The report points out, however, that there is no room for complacency and that there are still far too many accidents.

A detailed analysis by industry, age and sex of accidents reported is given in an appendix to the report. One interesting and perhaps obvious fact which emerges from the analysis is the variation in severity of accidents from industry to industry. For example, one in every 270 of all reported accidents was fatal but the proportion in different industries varied considerably. There has been no marked change in the number of cases of industrial poisoning or disease notified in recent years.

The report comments that there are still many small factories occupying premises which can never provide satisfactory accommodation but in some industries, such as steel, there have been considerable improvements including the provision of medical centres.

It is accepted that adequate safety training plays a considerable part in the prevention of accidents and the need for this being done systematically is urged. Safety training has been developed at technical colleges and schools as well as in industry itself. The report commends the Birmingham Industrial Safety Training Centre and Job Safety Courses through the Training Within Industry scheme.

THE RURAL INDUSTRIES BUREAU

The Rural Industries Bureau was founded in 1921 as a result of an inquiry undertaken for the Development Commissioners into means of obtaining advice in the development of rural industries. It is almost wholly maintained by grants from the Development Fund and there is a council which is responsible for the formulation of policy and supervision of the work carried out by the bureau.

In a foreword to the recently published annual report the chairman of the trustees, Sir Basil Mayhew, refers to the country-wide survey of rural industries which has been made in villages and towns of up to 10,000 population and with a limit for each unit of 20 skilled operatives. Unique records concerning thousands of small and widely varied businesses have been obtained. It is suggested that the social well-being of country folk is inevitably linked with the opportunity to choose their mode of employment and that while these small industries are providing this opportunity, they are at the same time contributing to the national economy.

A large proportion of the service of the bureau is given through the medium of visits of instruction and advice to country workshops in all parts of the country. Much advice is given also through correspondence, technical bulletins and publications. The report gives details of the various kinds of rural craftsmen who are helped in these ways. An interesting recent development has been the establishment at the bureau's headquarters of a workshop for the restoration of furniture from historic houses which has been kept fully employed.

REPORT OF THE CENTRAL HEALTH SERVICES COUNCIL

The report of the Central Health Services Council for the year ended December 31, 1957, was submitted recently to the Minister of Health and has since been published. Lord Cohen of Birkenhead has now succeeded Sir Frederick Messer, M.P., as chairman of the council.

The report includes several reports which were made to the Minister during the year by the various sub-committees. These included matters relating to the supply of orange juice to children over two years; the control of dangerous drugs and poisons in hospitals; immunization against diphtheria and whooping cough; and influenza vaccine. Reference was made in the previous report to the setting up of a committee to study the welfare of children in hospital. Evidence submitted to that committee is still being considered.

A matter of special interest is the consideration given by the Standing Mental Health Advisory Committee to industrial occupation schemes in mental and mental deficiency hospitals. It is pointed out that, in the main, work for the patients has usually been in the occupational therapy departments or the various utility and domestic departments of hospitals. A good deal of such work tends to be routine and dull. It lacks the stimulation, both as regards interest and reward, of tasks performed in the outside world, and it does not provide the conditions of working to which patients need to become re-accustomed on leaving the shelter of the hospital. Reference is made in the report to the study undertaken in this matter by the Social Psychiatry Research Unit of the Medical Research Council. The results of this study were embodied in advice given to the Minister. The main points noted were: hospitals with sufficient experience of industrial schemes considered that patients employed on them benefited socially and psychiatrically; it was possible to avoid anomalies in relation to rewards paid to patients working on purely hospital tasks; and schemes must provide patients with working conditions as nearly as possible resembling those in outside employment.

The committee recommended that industrial schemes in hospital should be contained with separate units in which the régime should approximate to that of outside industry, with normal hours of work, rates of pay and other working conditions: and that the present limit on earnings of 20*s.* a week imposed by the National Insurance (Unemployment and Sickness Benefit) Regulations, 1948, should be adjusted. The committee also considered

that industrial work might be done by patients (especially the subnormal) who are likely to remain in hospital for the rest of their lives. But that these patients should also be encouraged to do some ordinary hospital work. Generally, the committee concluded that industrial occupation schemes could be an important element in the therapeutic and rehabilitation resources of psychiatric hospitals and that they could be established in hospitals not too remote from industrial communities provided that energy and resourcefulness were harnessed to the task. The Minister has stated that these suggestions are under consideration.

DURHAM PROBATION REPORT

The familiar statement that the use of probation has shown an increase on previous years appears in the 1957 report of Mr. W. H. Pearce, principal probation officer for the county of Durham combined probation area. There was an increased use of probation for all age groups, but particularly in respect of male juvenile offenders. The total number of persons supervised during the year was the highest ever recorded. There has also been a substantial increase in the number of social inquiries made for the courts, and Mr. Pearce finds it encouraging that during the past five years the magistrates' courts have been making greater use of the probation officers in this respect. He also notes that it is now widely accepted in the higher courts that information of this kind can be of assistance to the court in deciding the appropriate sentence, even in cases in which probation would obviously be unsuitable. As in previous years, however, the percentage use of probation in County Durham, particularly in respect of juvenile offenders, was still less than that of the national average. The latest national figures it must be remembered were for 1956 and it may be that the increased use of probation in 1957 will alter the position.

Many courts have made full use of homes and hostels for probationers, but the report emphasizes the need for careful selection of cases, since hostels are not equipped to ensure the discipline which would be necessary for the persistent delinquent with a determined anti-social outlook. Nevertheless it has been found from experience that the adolescent from an unsatisfactory home who is in need of firm but sympathetic guidance, generally responds to the family atmosphere that many of the hostels provide.

Matrimonial cases, which had shown a decrease in number in 1956, increased in 1957 from 2,489 to 2,885.

Mr. J. P. Wilson, clerk to the Sunderland justices and joint editor of *Stone*, has given a series of lectures to probation officers, and Miss K. Lloyd, senior tutor in social studies, King's College, has attended several meetings where case work has been discussed. The probation officers are grateful to both of them for their help and guidance.

The statistics show that some of the case loads are heavy but the remedy is not easy to find. It seems to be increasingly difficult to find suitable applicants. As this report says, it is not only that officers prefer to work in the south rather than in the north, the shortage has become a national problem.

SHEFFIELD CHILDREN'S DEPARTMENT

Mr. J. W. Freeman, children's officer for the city of Sheffield, in his report for the year ended March 31, 1958, refers to what were then the Children Bill and the Matrimonial Proceedings (Children) Bill and their importance from the point of view of local authorities. He records the opinion of the Curtis Committee, upon whose recommendations the Children Act, 1948, was based that preventive work was outside their terms of reference and adds that existing legislation seems to have placed an unduly narrow limit on the powers of local authorities and that there has been a growing awareness over the past 10 years that they should be paying more attention to preventing family breakdown rather than waiting to deal with its effects. So far as it has been in their power, the children's committee in Sheffield adopts preventive measures and this policy is facilitated by its close co-operation with other agencies. The co-ordinating committee not only serves as a place of discussion concerning the needs of families in social difficulty, but also as a means to help each member to understand the problems, powers and possibilities of other services.

During the year the number of children in the care of the local authority increased from 532 on March 31, 1957, to 560 on March 31, 1958. Whereas, according to Home Office statistics, the average number of children under 18 in care per 1,000 of the population was 5·2 for the whole country, the figure for Sheffield was 4·4. During the year ending March 31, 1958, 370 children were received into care. Applications were received for an additional 384 children but the need for admission was not established. Of the 370 children admitted during the year 48 *per cent.* (179) were short stay cases mainly due to the temporary illness or confinement of the mother, and only stayed in care a few weeks.

Before any child is received into care, inquiries are made and alternative methods of care are considered. Parents are encouraged and helped to make their own arrangements wherever possible. Also other services are consulted in order to avoid unnecessary separation of the children from their parents. Casework help is given to parents in order that they may resume care of their children. During the year 342 children were discharged from care, 86 *per cent.* (292) were discharged to the care of their parents or guardians. Of those who made applications for children to be received into care but failed to establish the need, 20 *per cent.* were referred to the health department for day nursery care or home help service; 25 *per cent.* were referred to the National Society for the Prevention of Cruelty to Children, 12 *per cent.* were referred to the social care department, two *per cent.* to the National Assistance Board, 11 *per cent.* were helped and advised by child care officers, five *per cent.* of parents rejected the offer of a foster home, 24 *per cent.* of parents were able to make their own arrangements and one *per cent.* were referred to other agencies.

Boarding-out remains the primary method of care although foster parents are difficult to find. The easiest group of children to board out in Sheffield are those without close parental ties. The most difficult groups to board out are the children who are homeless or the subject of fit person orders.

An interesting item is the statement that the number of children and young persons from Sheffield detained in approved schools over the past eight years has been steadily decreasing. The number in 1950 was 74 which decreased to 34 in 1957 and has reached a record low level of 27 at March 31, 1958. Another is that parental contributions collected were the highest on record. In 1950 the amount collected was £2,414 which rose to £5,875 in 1957 and reached £6,578 at March 31, 1958.

COUNTY BOROUGH OF WOLVERHAMPTON: CHIEF CONSTABLE'S REPORT FOR 1957

As in 1956 there was, during 1957, a net gain of five in actual strength. Recruiting was better, but unfortunately losses also increased. There were 20 fresh members, but there were 15 losses. In 1956 the figures were 10 and five respectively.

The chief constable considers that during 1958 an application for increased establishment will have to be considered. The average population to each member of the force for all city and borough forces is 537. For Wolverhampton the figure is 687. The chief constable recognises that local considerations may well affect, in any case, the decision as to what is the proper establishment, which can never be fixed "merely to comply with a mathematical formula," but in his view the average figure is much nearer Wolverhampton's needs than is that given by the present establishment. At present, he writes, "much of our essential work has to be attempted by the spasmodic application of special squads made up by withdrawing men from other tasks."

There was another considerable jump in the crime figures. Nineteen fifty-five's total was 1,517, 1956's reached 1,807 and 1957's was 2,213. These figures are based on counting as one crime a series of offences committed against one victim. The actual number of offences reported for 1957 was 3,253, the highest ever recorded in Wolverhampton; but 287 of these were written off as "no crime" and 73 were classed as taking and driving away motor vehicles. A disturbing feature of the figures is a very big increase in juvenile crime, from 290 in 1956 to 475 in 1957. Juvenile crime represents 40 *per cent.* of all detected crime. The number of juveniles implicated in breaking offences increased from 24 to 76. In the chief constable's view the increase in crime is most disturbing and "it is high time that crime and anti-social acts were regarded considerably more from the point of view of the victim and the evil inflicted on society." He is not alone in thinking in this way, and we may yet see a league for the protection of the victims of crime.

EVESHAM RURAL DISTRICT ACCOUNTS, 1957–58

The accounts of the Evesham rural district have been promptly prepared and published by the chief financial officer, Mr. N. W. Roberts.

This pleasant rural district has an area of 53,000 acres and a population of 17,000. It levied in the year under review a rate of 17*s.* of which 14*s.* 3*d.* was for Worcestershire county council.

Expenditure on general district account exceeded income by £4,000 but the district fund balance still amounted to £41,000 at the year end. Produce of a 1*d.* rate was £778.

About 75 *per cent.* of the income of the housing revenue account comes from rents. As from March 29 last these have been increased from 1·8 times to twice the gross value for rating purposes. The authority has spent over £1¼ million on the provision of houses: in addition at March 31, 1958, £360,000 was outstanding in respect of housing advances.

The deficit on the waterworks revenue account increased to £8,900 due to additional loan charges on new capital schemes.

The cost of fuel control in the area was £1,060.

Evesham must be one of the cheapest governed districts in the country: the chairman's expenses for the year amounted to only £7 while the total for all other members of the authority totalled £33.

CARDIFF PROBATION REPORT

The first part of the 1957 report of the probation committee for the city of Cardiff is concerned with the juvenile court, in which there was an increase in the number of cases. Of juveniles found guilty of indictable offences nearly 29 *per cent.* were placed on probation.

Of those absolutely or conditionally discharged 173 offenders were ordered to pay costs. An order for payment of costs or compensation is almost invariably made also when a child or young person is placed on probation. Taking all the different courts, juvenile (110) and adult (121) together, the total number put on probation in Cardiff in 1957 was 231, the highest since 1951 (237 probationers).

It is noted that the 121 probationers (although including seven juveniles) from the adult courts outnumber the juvenile figure, 110. This is the first time that the number of probationers from adult courts has exceeded the number from the juvenile court. The higher courts are making a fuller use of the probation service than formerly.

During 1957 of the matrimonial cases referred to the probation officers for attempted reconciliation, 149 were completed. Apparent success was obtained in 105, about 70·5 *per cent.*

NORWAY—SOME LEGAL LANDMARKS

Oslo, September 14.

As is obvious from a glance at the map, Norway is roughly pear-shaped. Five hundred miles of coastline, the narrow part of the "pear," are situated within the Arctic Circle; Oslo, in the east, and Bergen, on the west coast, are on approximately the same latitude as the Shetland Islands. There are great areas of mountainous country, rising in the centre to 8,000 *ft.*, much of it covered with perpetual snow; there are glaciers and lakes, bleak and almost barren moorlands, and enormous trackless forests; and, on the west coast, deep fjords—inlets, often with precipitous sides, running far into the land. Thus it comes about that this vast territory, a total area of 119,000 square miles, supports a population of only 3½ million people—no more than one-third of the inhabitants of Greater London.

For many centuries internal communications were few and far between. At the end of the ninth century Norway became one united kingdom under Harold Haarfagre (Harold of the Comely Hair). Before this date, every part of the country had its own *Ting* (assembly); each such assembly (originally known as the *Allting*) was attended by all the free and able-bodied men of the district, who there decided public affairs and administered justice according to local custom. From the middle of the tenth century a new body, known as the *Lagting* (law assembly) was set up in each province, with judicial, executive and legislative powers. Some of its members were nominated, by the Royal Governor of the province, from among the most judicious and trustworthy of the inhabitants; the King was represented by certain of his officers; and (after the introduction of Christianity, midway through the eleventh century) the Church was represented by its local bishops and certain of its priests. The proceedings at each yearly meeting were presided over by the *Lagmann* ("law-speaker"), a man learned in the law, who directed those present on the legal rules applicable to the cases before them. The *Lagmann* was not a judge in the modern sense; but it soon became customary for the *Lagrett* (a judicial committee of the *Lagting*, consisting of lay judges) to accept and apply the *Lagmann's* directions on the law.

At this period the legal system (as once in England) was based, primarily, on custom and, secondarily, on case-law; but, from about the year 1100 the legislative Acts of each *Lagting* were recorded in writing. By the twelfth century there was a *Lagting* in each of the four main provinces of the country, each with its own separate *Lagdömme* (geographical jurisdiction). It was not until 1274, during the reign of King Magnus Lagaböter ("Law Mender") that a common law for the rural areas of the whole country was compiled and codified, under the name of *Landslov* (the law of the land). It was valid, not only throughout Norway, but also in the kingdom's overseas territories—Greenland, the Faroes, the Orkneys and the Shetlands; Iceland had its own code, known as "Jon's Book," parts of which are still in force today.

Apart from these institutions, which flourished in the large rural areas, there was a special system of mercantile law administered, in the few townships, by judicial, executive and legislative bodies of their own. Jurisdiction in each township was vested in 12 aldermen, elected by the citizens from among their number. Here, again, the "law-speakers" assisted in the adjudication of cases. In 1276 was enacted a common mercantile law for the townships of the whole country.

These institutions endured for over 400 years, though in practice they were partially supplanted, from time to time, by the *Retterböter*—"royal reforms," which the King, by virtue of the Code of 1274, was expressly empowered to promulgate in certain fields. The system continued after the Union in 1380 with Denmark. The old Norse language was still employed until 1604 when, in the reign of King Christian IV of Denmark and Norway, a redrafted Code was published in Danish. A further important modification was made in 1687, under King Christian V, when certain provisions of Danish law were introduced. Some of these are still in force at the present time.

Gradually the wide geographical jurisdiction of each *Lagting* was subdivided; and the administration of justice in each of the smaller areas was vested in a selected body of *Lagrettemenn* (Jurors or lay Judges), presided over by a sworn legal stipendiary (the *Sorenskriver*), appointed by the King; and this officer, as time went on, became virtually a professional judge. (The name *Sorenskriver* is still applied to Judges of the county and town courts). The Code of Christian V limited the duties of the *Lagrettemenn* to criminal trials involving capital punishment, and civil cases concerning immovable property or defamation. From the end of the eighteenth century it was enacted that certain private prosecutions and civil actions should not be instituted until after mediation by an official conciliation council; and this official mediation is still obligatory before the commencement of

private suits, other than matrimonial causes, questions of descent, actions against the State or a municipality, or their officials, disputes between landlord and tenant, and a few others. (Matrimonial disputes must be referred, before legal action, to *private* mediation.) The conciliation council may, at the request of the parties, settle the dispute, or may refer it to a court of law for trial.

At the end of the thirteenth century it was enacted that a right of appeal lay from the decision of a legal tribunal to the King in Council (*Riksraadlagting*); in the sixteenth century this appeal tribunal was decentralized. After 1660 a High Court of Justice for the whole of Norway sat in Christiania (Oslo); but the final Court of Appeal was in Copenhagen. The President (*Justitiarius*) was usually a Danish Judge; but the office was held by Norwegians from 1799 to 1802 and from 1804 to 1814. Under the constitution of 1814 (when the union with Denmark was dissolved) Norway had its own Supreme Court and Court of Appeals, sitting in Christiania—the capital city, today known by its ancient name of Oslo.

Under the Constitution of 1814 no man may be arrested or imprisoned except as laid down by law. In criminal cases the accused must be regarded as innocent unless and until the prosecution can prove otherwise; though, in defamation cases, the burden rests on the defendant to prove, if he can, the truth of the defamatory statement. In all cases the accused must be given the benefit of any reasonable doubt. If the defence of insanity is raised, the onus is on the *prosecution* to disprove it. The accused may give evidence on his own behalf, but does not do so under oath. Other witnesses are sworn, *after* the termination of their evidence. The trial must be in public, unless the accused is under the age of 18, and in certain other rare circumstances provided by law. There are no special courts for young offenders; but the Public Prosecuting Authority has power to waive, and usually does waive, criminal proceedings against an accused person under 18—generally making it a condition that the juvenile welfare committee of his municipality shall take appropriate supervisory or preventive measures. A juvenile can be punished only for an offence which he has committed after attaining the age of 14.

There is no death penalty in Norway, except for certain grave war-crimes, including treason committed during war. As from the beginning of 1956, military offences in times of peace are to be dealt with by the ordinary criminal courts and not by courts martial.

The legislative body for the whole country is now known as the *Storting* (Great Assembly). The Judges are independent of the executive; but they must retire at 70. They can be removed from office only if civil or criminal proceedings are successfully taken against them *ad hoc*—a contingency which is extremely rare. Women are eligible for appointment; there is in fact one woman Judge now holding office. Judicial salaries, according to our standards, are extremely moderate. The President of the Supreme Court receives only £2,400 *per annum*; its other Judges, £1,950; the First Presiding Judge of the Oslo Court of Appeals, £1,800; other Judges of that Court, £1,600.

A.L.P.

ADDITIONS TO COMMISSIONS

NORWICH CITY

Mrs. Betty Carlisle Davies, 18 Newmarket Road, Norwich.

RUTLAND COUNTY

George Reginald Core, 76 Cold Overton Road, Oakham.
John Lowe Hassan, The Parade, Oakham.
Cecil Henry Hollis, Manor Farm, Cottesmore, Oakham.

REVIEWS

The Rent Act in Practice. By N. D. Banks. London: Solicitors' Law Stationery Society, Ltd. Price 15s. net.

This is a collection of questions and answers on the same lines as our own Practical Points. The answers have been given in the Readers' Advisory Service of the *Solicitors' Journal*, and the learned editor has, where necessary, revised the answers in the light of any later decisions of the courts. The work has the great practical advantage that every question in it has actually arisen. One is sometimes tempted to think that the number of problems which can arise under the Rent Restriction Acts is unlimited, but it must be true that certain questions are asked again and again, and the present collections of answers will accordingly be valuable to solicitors and officials who have to deal with every day problems.

The Landlord and Tenant (Temporary Provisions) Act, 1958, which did not pass into law until the end of the session is noticed in an appendix (in the form in which the Bill stood when the work went to press) and Mr. Banks thus achieves the distinction of being the first textbook writer to comment on that Act, in relation to questions which have been found actually to arise under the main provisions of the Rent Act, 1957.

Williams on Wills. Second Cumulative Supplement. By W. J. Williams. London: Butterworth & Co. (Publishers) Ltd. Price 17s. 6d. net.

This supplement brings the law as stated in *Williams on Wills* up to date as at April 1, 1958. It is in the usual form of supplement issued by Messrs. Butterworth for their large standard works, comprising a Noter-up with additional matter. The Noter-up covers both volumes of the main work, and includes not merely cases decided in this country but those available here which have been decided in jurisdictions overseas, which follow the same principles of testamentary law. A useful feature, to which special attention may be drawn, is a list of words and phrases which have been interpreted by the courts, with references to the page where the interpretation is appropriate. The additional matter following the Noter-up comprises single clauses to provide for various contingencies, and some additional complete forms of wills to provide for certain less usual contingencies which have come to notice by reason of cases reported in the last few years. The supplement is cumulative; the combined price of the main work in two volumes and the supplement is seven guineas.

The Assize and Quarter Sessions Handbook. By Cyril E. S. Horsford, M.A. (Cantab.), Barrister-at-Law, Senior Assistant, County of London Sessions. London: Sweet & Maxwell Ltd. Price 17s. 6d.

This excellent little handbook is based on *The Quarter Sessions Handbook* by Linton Thorp, K.C., LL.B., and Raymond E. Negus, D.S.O., M.A., but it has been brought up to date and its scope somewhat extended. The experience of the present editor enables him to know what practitioners will find most useful to be included in a book small enough to be carried in the pocket. The alphabetical order of subjects, together with an index, makes quick reference easy. In a small space a great deal of information is given about procedure, evidence, jurisdiction, appeals and a number of specific offences.

On page 12 it is stated that appeals from magistrates' courts are heard by courts consisting of not less than three nor more than 12 members of the Appeal Committee. In view of the provisions of the Justices of the Peace (Size and Chairmanship of Bench) Rules, 1950, and the reference to committees of quarter sessions in s. 44 of the Justices of the Peace Act, 1949, we have always thought the maximum number to be nine.

On p. 32 the conclusive presumption that a child under eight cannot be guilty of an offence is noted. We think it would have been an advantage if there had been some mention and discussion of the rebuttable presumption in the case of a child who is at least eight but under 14. We mention these two small points because we think they are of some importance, but we certainly desire to recommend the book to practitioners and officials.

Age Through the Ages. A brief history of the care of the elderly. National Council of Social Service, 26 Bedford Square, W.C.1. 1s. net.

This booklet will be useful to lecturers at courses for health visitors and for workers in the health and welfare services generally although primarily intended for voluntary workers. It contains some useful information in a small compass.

PRACTICAL POINTS

All questions for consideration should be addressed to "The Publishers of the Justice of the Peace and Local Government Review, Little London, Chichester, Sussex." The questions of yearly and half-yearly subscribers only are answerable in the Journal. The name and address of the subscriber must accompany each communication. All communications must be typewritten or written on one side of the paper only, and should be in duplicate.

1.—Criminal Law—*Obtaining credit by fraud or other false pretence—Debtors Act,* 1869, *s.* 13—*Form of information.*

I have read with interest the P.P. 2 at 122 J.P.N. 591 relating to obtaining credit by fraud or other false pretences under the Debtors Act, 1869, and, with respect, it seems to me that the writer of the opinion has overlooked *R.* v. *Holmes and Another,* which was decided by Mr. Justice Salmon at Leeds Assizes in April of this year. The case was, I think, reported in *The Times* somewhere during the period April 21–26, but it is reported on p. 394 *et. seq.* of the June issue of the *Criminal Law Review.* The relevant part of the report is as follows:

"In the course of his summing-up Salmon, J., expressed in strong terms the view 'of all the Judges at the Assize' (Byrne, Davies, Elwes, JJ., and himself) that the form of the indictment approved in the case of *R.* v. *Perry* [1945] 31 Cr. App. R. 16, although a decision of the Court of Criminal Appeal, ought not to be followed, *pace* the precedent in *Archbold* (p. 1348). No authorities were cited to the court in *Perry.*

"In cases under the Debtors Act, 1869, s. 13 (1), it was undesirable to have the double allegation of false pretences and fraud other than a false pretence in one count; it was much better that separate alternative counts should be put in an indictment alleging, in the first count, obtaining credit by false pretences, and in the second, obtaining credit by fraud other than a false pretence, as in the view of the Judges, it made it much easier for the jury to consider the matter."

In view of this it would appear to me that the opinion which has been given may need revision.

F. RASMON AGAIN.

Answer.

We are indebted to our correspondent for drawing attention to *R.* v. *Holmes and Another, supra,* but we were aware of this statement when we answered the P.P. at p. 591, *ante.*

In default of any other authoritative pronouncement, any statement by a Judge at Assizes deserves respect, but we cannot agree that magistrates' courts should act on such a pronouncement when there is the authority of the Court of Criminal Appeal to the contrary. With the greatest respect to the learned Judges, we feel that until the Court of Criminal Appeal itself pronounced on the subject, magistrates' courts cannot go wrong by following the clear decision in *Perry's* case.

2.—Food and Drugs—*Warranty pleaded as defence—Food and Drugs Act,* 1955, *ss.* 113 *and* 116.

As a result of a complaint made to them by a ratepayer that food sold to her was, at the time of the sale, infested by beetles, a local authority have instituted separate proceedings alleging an offence contrary to ss. 2 and 8 respectively of the Food and Drugs Act, 1955. Before instituting proceedings, the local authority investigated thoroughly the circumstances which had arisen and, although they were aware that the article of food had been obtained by the retailer from a manufacturer, they were not reasonably satisfied that the cause of complaint was due to an act of default of the latter.

The retailer was fully aware of the position and of the complaint made to the council, but made no respresentations or offer of assistance at that time. The local authority did not, therefore, exercise the power contained in s. 113 (3) of the Food and Drugs Act, 1955, but proceeded against the retailer who has now given notice, under s. 115 of the same Act, of his intention to plead, as a defence, a warranty in the terms attached, given to him by the manufacturer.

The retailer is reasonably confident that he can prove the three points required by s. 115 (1) to establish the warranty as a defence and has indicated that, in his view, the local authority should immediately take such other steps as are available to them and prosecute the manufacturer under the same sections, using their power to do so as contained in s. 113 (3) of the Act. The local authority consider the retailer will be able to establish points (*a*) and (*b*) set out in s. 115 (1) but would not draw any conclusion at this stage in relation to point (*c*) as much will depend on the evidence adduced by the retailer.

The local authority consider that, in view of the action which they have taken already, they cannot and should not take any further steps until the proceedings already commenced have been determined and that, if the retailer is successful, they are then enabled to prosecute within a period of twelve months of the date of the warranty the manufacturer under s. 116 (2) of the same Act in respect of a false warranty, or, alternatively and in addition, within a period of six months of the sale of the food, to prosecute the manufacturer under s. 113 as suggested by the retailer.

It is understood to be unlikely that the manufacturer will take advantage of s. 115 (4) and appear at the hearing.

Your valued opinion would be appreciated upon the following points:—

(*a*) Do you agree with the view of the local authority as expressed above?

(*b*) The question of costs of the proceedings instituted against the retailer should he succeed in his proposed defence.

(*c*) The terms of s. 116 (3) in relation to proceedings taken under that section, bearing in mind that the food, the subject of the proceedings in this case, was not procured as a sample and that it is not necessary for it to have been procured in this way to enable s. 115 of the Act to be pleaded as a defence.

H. CIVCO.

Answer.

(*a*) We agree with the view of the local authority. Section 113 (3) of the Act is permissive and that only after the authority are reasonably satisfied that the offence was due to an act or default of some other person. The authority in the present case have apparently taken the view that they are not "reasonably satisfied," and we think they are entitled to test the matter in court in proceedings against the retailer.

(*b*) If the retailer is successful, the question of costs must be a matter for the court, and one of the considerations must be whether it was obvious to the authority from the start that proceedings ought to have been brought against the manufacturer and not the retailer.

(*c*) We think that proceedings under s. 116 (2) of the Act must be brought before the court having jurisdiction in the place where the warranty was given since no sample was procured. Since the warranty was endorsed on the invoice under which the goods were purchased, we would suggest that the place where the warranty was given was the place where the purchaser received the invoice.

3.—Gaming—*Premises entered in pursuance of a warrant under s.* 11 *of the Betting Act,* 1853—*Frequenters not arrested—Can they now be summoned?*

The police entered premises in pursuance of a warrant granted under s. 11 of the Betting Act, 1853. They arrested one man for being the occupier and keeping the premises for the purpose of betting with persons resorting thereto, and took possession of betting slips and money. There were 15 other men about the room reading sporting papers, studying racing information written up on black-boards and listening to a loud-speaker racing commentary. These men were not arrested and the police merely took their names and addresses.

The police wish to proceed against the 15 men by summons for resorting at a common gaming house.

The warrant, following the usual form, specifically directed the police to arrest and bring before the magistrates (*inter alia*) the persons there haunting and resorting for the purpose of betting.

As the terms of the warrant were not complied with so far as the 15 men were concerned, may they now be proceeded against on summons?

I appreciate that in the case of the man arrested an information should be laid and summons issued (*Blake* v. *Beech* (1876) 40 J.P. 678).

H. WHITE ROSE.

Answer.

We do not think that the frequenters may now be proceeded against by summons. It appears from *Blake* v. *Beech, supra,* that only a person "arrested" is entitled to an information and summons. In the present case, the terms of the warrant were not complied with in so far as the frequenters were not arrested and we cannot see how proceedings can now be taken against them.

4.—Local Government—*Election of aldermen to fill casual vacancy—Failure to elect.*

I would like to refer to your answer at p. 455 and raise two questions:

(i) Would not the town clerk first need the instructions of his authority before instructing counsel to move the High Court, and, even if he did take it upon himself to do this, supposing the authority then refused to pay the legal costs involved? Would not the town clerk be liable to pay them himself—although presumably the Court could, if it felt so disposed, make an order for the authority to pay them?

(ii) If the High Court were to make an order under s. 72 (2) of the Local Government Act, 1933, for the holding of another aldermanic election, there is nothing to stop the councillors concerned from still submitting blank papers when the election would still be void. The Court might certainly order an election to be held, but it would not force the councillors to vote, for otherwise it would be exercising a discretionary power and this, I understand, a court will not do.

COURTUS.

Answer.

(i) We do not underrate the awkwardness of the course we suggested. It is not so much the question of costs; we feel sure that the Divisional Court would make an order for his protection here. But among councillors who were deliberately defying the law his personal position might become difficult. We consider, however, that as a public officer he has a duty which does not depend upon instructions from the council.

(ii) The Court would not tell the councillors whom to elect (which would be assuming the discretion belonging to them alone) but that they must elect some persons. The Court's order could be enforced, if necessary, by imprisonment, but we cannot suppose all the councillors would agree to force the issue so far. As soon as any of them complied with the order by writing names, further blank papers from the others would not matter.

5.—Public Health Act, 1936—*Existing buildings with insufficient drainage—Compulsory powers—Proviso in s.* 37 (3) (*b*).

My council have resolved to lay a new sewer to serve a row of houses with insufficient drainage. It will be better to lay the sewer not through the back gardens of the houses, but in a field behind them. The field's owner is prepared to make free grants of easement to the individual property owners, to enable them to lay the necessary drain from house to sewer across the few feet of his intervening land. Apart from this, they would have no right to do so. If my council lay the sewer in the field and thereupon serve notice on the individual owners, requiring them to connect to it (s. 39), will an owner be able successfully to refuse to comply, on the ground that under the proviso in s. 37 (3) (*b*), a drain shall not be required to be made to connect with a sewer unless the intervening land is land through which that person is entitled to construct a drain? One point which causes me difficulty is: can one force a man to accept the gift of a right? The house owners are not a party to this agreement.

PEXA.

Answer.

If this were really the grant of an easement to the owner of the houses, it would have to be made by deed so expressed. The grant would be immediately effective: *Doe d. Garnons* v. *Knight* (1826) 5 B. & C. 671, but could be disclaimed by him when he got to know about it: *Townson* v. *Tickell* (1819) 3 R. & Ald. 31; *Mallott* v. *Wilson* (1903) 89 L.T. 522. But we doubt whether it is necessary to go into this. In *Meyrick* v. *Pembroke Corporation* (1912) 76 J.P. 365, Lord Alverstone, L.C.J., said "if there is substantial difficulty in the way of obtaining permission," and the owner of the houses could not show that there was difficulty, when the owner of the field had covenanted with the council to give permission. We read *Lumley's* note as indicating that the council's position is stronger under the Act of 1936 than it was in 1912.

6.—Road Traffic Acts—*Provisional licence—Holder drives with a passenger who is not a qualified driver—Passenger as an aider and abettor?*

The holder of a provisional licence drives a motor car on a road without having with him an experienced driver within the meaning of reg. 16 (3) of the Motor Vehicles (Driving Licences) Regulations, 1950, but having seated alongside him an adult passenger. The passenger admits that he knew before the journey commenced that the driver held only a provisional licence and the driver admits that he knew that the passenger did not hold a driving licence.

It has been contended that the passenger aids and abets the driver to commit the offence of the holder of a provisional licence driving a motor car when not under the supervision of an experienced driver.

I take the view that an aider and abettor being a person who knowing that the act constituting an offence is being committed assists the offender in the commission of the act, or one who fails to discharge a duty which he has undertaken, by his passive conduct in circumstances which require him to be active, no offence has been committed by the passenger. (*See Ackroyds Air Travel Ltd.* v. *Director of Public Prosecutions* (1950) 114 J.P. 251 and *Rubie* v. *Faulkner* (1940) 104 J.P. 251.)

It appears that the passenger did not help the driver in any way to drive when not under proper supervision and clearly he has not undertaken any duty in relation to the driver.

I suppose, however, that circumstances could arise in which a person could counsel or procure the commission of an offence under the regulations.

Your opinion on the matter would be much appreciated.

J.A.Z.

Answer.

The onus is on the prosecution to prove their case, and they must satisfy the court that the passenger, in addition to having knowledge of the relevant facts, has done something either by commission or omission to lead to, or to assist in the commission of the driver's offence. His mere presence in the vehicle as a passenger does not, in our view, make him guilty as an aider and abettor.

7.—Shops—*Sunday employment—Casual employees—Shops Act,* 1950, *s.* 22 (1).

Within the area of a local authority there is a café which during the summer months is open on Sundays. It has been found necessary to engage casual employees for work on Sundays and in this respect my attention has been drawn to s. 22 (1) of the Shops Act, 1950. This sub-section prohibits the employment of any "person" on Sunday about the business of a shop unless certain requirements are complied with. In the case of persons who work for more than four hours on a Sunday, one of the requirements is that such person shall not be employed about the business of a shop on more than two other Sundays in the same month.

The question is, whether a casual employee, whose only employment is in the café on Sundays during the summer months, is prohibited by the section from working, for example, on two Sundays out of the five in August.

The other requirement in s. 22 (1) (*a*) which concerns whole holidays certainly does not seem to be an appropriate provision so far as casual employees of the kind which I have described are concerned. It does seem, however, that s. 22 (1) (*a*) (ii) is perfectly clear and I cannot, at the moment, see any interpretation except the obvious one that no person under any circumstances may work in a shop on more than three Sundays in any one month if employed for more than four hours on any one of those Sundays.

It is appreciated that the difficulty might not have arisen if the words "shop assistant" had been substituted for the word "person" in s. 22 because "shop assistant" is so defined as to exclude any person not wholly or mainly employed in a shop.

I should be glad of your opinion as to whether employees who work say betwen 2 *p.m.* and 6.30 *p.m.* on Sundays in the café but have no other remunerative employment can be permitted to work every Sunday, or whether they must, at the risk of discontinuing certain refreshment facilities on the day when in most demand, be prohibited from working more than three Sundays in the month.

H. PAT.

Answer.

We agree with our correspondent that the section does not seem to cater for casual employment. Although s. 22 (1) (*a*) (i) clearly does not apply, para. (ii), on the face of it, does and, with some hesitation, we think the safer course would be for an employer to confine casual workers to four hours' employment on a Sunday. In practice, we cannot see that this would be any great hardship as presumably he can employ two different employees each Sunday.